

HOUSE BILL NO. 706

INTRODUCED BY D. RICE

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4 A BILL FOR AN ACT ENTITLED: "AN ACT IMPOSING A CIVIL PENALTY OF UP TO \$24 A DAY FOR AN
5 EMPLOYER DOING BUSINESS IN THE STATE WHO FAILS TO FILE A REPORT CONTAINING A
6 COMPLETED W-4 FORM OR ITS EQUIVALENT INFORMATION FOR EACH NEWLY HIRED OR REHIRED
7 EMPLOYEE AND A CIVIL PENALTY OF UP TO \$495 AGAINST AN EMPLOYER IF THE FAILURE TO FILE
8 A REPORT IS THE RESULT OF A CONSPIRACY BETWEEN THE EMPLOYER AND THE EMPLOYEE TO
9 NOT SUPPLY THE REPORT OR TO FILE A FALSE OR INCOMPLETE REPORT; PROVIDING AUTHORITY
10 TO HOLD AN EMPLOYER IN CONTEMPT FOR FAILURE TO REPORT NEWLY HIRED EMPLOYEES; AND
11 AMENDING SECTIONS 40-5-226 AND 40-5-922, MCA."

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13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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15 **Section 1.** Section 40-5-226, MCA, is amended to read:16 **"40-5-226. Administrative hearing -- nature -- place -- time -- determinations -- failure to appear**
17 **-- entry of final decision and order.** (1) The administrative hearing is defined as a "contested case".18 (2) If a hearing is requested, it must initially be conducted by teleconference methods and is subject to
19 the Montana Administrative Procedure Act. At the request of a party or upon a showing that the party's case was
20 substantially prejudiced by the lack of an in-person hearing, the hearings officer shall grant a de novo in-person
21 hearing.22 (3) The hearings officer shall determine the liability and responsibility, if any, of the parent or parents
23 under the notice and shall enter a final decision and order in accordance with the determination. The order may
24 award support from the date of:25 (a) the child's birth if paternity was established under 40-5-231 through 40-5-238 or under Title 40,
26 chapter 6, part 1, subject to the limitation in 40-6-108(3)(b);

27 (b) the parties' separation if support is initially established under 40-5-225; or

28 (c) notice to the parties of a support modification request under 40-5-273.

29 (4) (a) Except as provided in subsection (4)(b), if the parent or parents fail to appear at the hearing or
30 to timely file a request for a hearing, the hearings officer, upon a showing of valid service, shall enter a default

1 decision and order declaring the amount stated in the notice to be final.

2 (b) In a multiple party proceeding under 40-5-225, if one party files a timely request for hearing, the
3 matter must be set for hearing. Notice of the hearing must be served on the parties. If a party refuses to appear
4 for the hearing or participate in the proceedings, the hearings officer shall determine child support and medical
5 support orders based on the notice, information available to the department, and evidence provided at the
6 hearing by the appearing parties. A party's refusal to appear is a consent to entry of child and medical support
7 orders consistent with the hearings officer's determination. However, the default order may not be for more than
8 the support requested in the notice unless the hearings officer finds that the evidence requires a larger amount.

9 (5) In a hearing to determine financial responsibility, whether temporary or final, and in any proceeding
10 to modify support under 40-5-272, 40-5-273, and 40-5-276 through 40-5-278, the monthly support responsibility
11 must be determined in accordance with the evidence presented and with reference to the uniform child support
12 guidelines adopted by the department under 40-5-209. The hearings officer is not limited to the amounts stated
13 in the notice. The guidelines must be used in all cases, including cases in which the order is entered upon the
14 default of a party and those in which the order is entered upon the parties' consent. A verified representation of
15 a defaulting parent's income, based on the best information available, may be used when a parent fails to
16 provide financial information for use in applying the guidelines. The amount determined under the guidelines
17 is presumed to be an adequate and reasonable support award, unless the hearings officer finds by clear and
18 convincing evidence that the application of the guidelines is unjust to the child or to any of the parties or is
19 inappropriate in a particular case. If the hearings officer finds that the guideline amount is unjust or inappropriate
20 in a particular case, the hearings officer shall state the reasons for finding that the application of the guidelines
21 is unjust to the child or a party or is inappropriate in that particular case. Similar findings must also be made in
22 a case in which the parties have agreed to a support amount that varies from the guideline amount. The hearings
23 officer may vary the application of the guidelines to limit the obligor's liability for past support to the proportion
24 of expenses already incurred that the hearings officer considers just. Findings that rebut and vary the guideline
25 amount must include a statement of the amount of support that would have ordinarily been ordered under the
26 guidelines.

27 (6) In a hearing to enforce a support order or to establish paternity under this chapter, the department
28 shall send a copy of the notice of hearing to the obligee by regular mail addressed to the obligee's last-known
29 address. The obligee may attend and observe the hearing as a nonparty. This subsection does not limit
30 participation of an obligee who is a party to the proceedings or who is called as a witness to testify.

1 (7) (a) Within 60 days after the hearing has been concluded, any posthearing briefs are received, and
2 all the evidence submitted, except for good cause, the hearings officer shall enter a final decision and order. The
3 determination of the hearings officer constitutes a final agency decision, subject to judicial review under 40-5-253
4 and the provisions of the Montana Administrative Procedure Act. A copy of the final decision must be delivered
5 or mailed to each party, each party's attorney, and the obligee if the obligee is not a party.

6 (b) A child support obligation established under this section is subject to the registration and processing
7 provisions of part 9 of this chapter.

8 (8) A support order entered under this part must contain a statement that the order is subject to review
9 and modification by the department upon the request of the department or a party under 40-5-272, 40-5-273,
10 and 40-5-276 through 40-5-278 when the department is providing services under IV-D for the enforcement of
11 the order.

12 (9) A support debt determined pursuant to this section is subject to collection action without further
13 necessity of action by the hearings officer.

14 (10) A child support obligation determined under this part by reason of the obligor's failure to request
15 a hearing under this part or failure to appear at a scheduled hearing may be vacated, upon the motion of an
16 obligor, by the hearings officer within the time provided and upon a showing of any of the grounds enumerated
17 in the Montana Rules of Civil Procedure. When issuing a support order, the department shall consider whether
18 any of the exceptions to immediate income withholding found in 40-5-411 apply, and, if an exception is
19 applicable, the department shall include the exception in the support order.

20 (11) (a) Unless the hearings officer makes a written exception under 40-5-315 or 40-5-411 and the
21 exception is included in the support order, each order establishing a child support obligation, whether temporary
22 or final, and each modification of an existing child support order under this part is enforceable by immediate or
23 delinquency income withholding, or both, under Title 40, chapter 5, part 4. A support order that omits that
24 provision or that provides for a payment arrangement inconsistent with this section is nevertheless subject to
25 withholding for the payment of support without need for an amendment of the support order or for any further
26 action by the hearings officer.

27 (b) If an obligor is excepted from paying support through income withholding, the support order must
28 include a requirement that whenever a party to the case is receiving IV-D services, support payments must be
29 paid through the department as provided in 40-5-909.

30 (12) (a) If the department establishes paternity or establishes or modifies a child support obligation, the

1 department's order must include a provision requiring each party other than the department to promptly file with
2 the department and to update, as necessary, information on:

- 3 (i) identity of the party;
4 [(ii) social security number;]
5 (iii) residential and mailing addresses;
6 (iv) telephone number;
7 (v) driver's license number;
8 (vi) name, address, and telephone number of employer; and
9 (vii) if the child is covered by a health or medical insurance plan, the name of the insurance carrier or
10 health benefit plan, the policy identification number, the name of the persons covered, and any other pertinent
11 information regarding coverage or, if the child is not covered, information as to the availability of coverage for
12 the child through the obligor's and obligee's employer.

13 (b) The order must further direct that in a subsequent child support enforcement action, upon sufficient
14 showing that diligent effort has been made to ascertain the location of the party, the department's due process
15 requirements for notice and service of process are met with respect to the party upon delivery of written notice
16 by regular mail to the most recent address of the party or the party's employer's address reported to the
17 department.

18 (c) The department shall keep the information provided under subsection (12)(a) confidential except
19 as necessary for purposes of Title IV-D of the Social Security Act.

20 (13) The hearings officer may:

21 (a) compel obedience to the hearings officer's orders, judgments, and process and to subpoenas and
22 orders issued by the department, including income-withholding orders issued pursuant to 40-5-415;

23 (b) compel the attendance of witnesses at administrative hearings;

24 (c) compel obedience of subpoenas for paternity blood tests;

25 (d) compel the production of accounts, books, documents, and other evidence;

26 (e) punish for civil contempt. Contempt authority does not prevent the department from proceeding in
27 accordance with the provisions of 2-4-104.

28 (f) compel the production of information requested by the department or a IV-D agency of another state
29 under 40-5-443.

30 (14) A contempt occurs whenever:

1 (a) a person acts in disobedience of any lawful order, judgment, or process of the hearings officer or
2 of the department;

3 (b) a person compelled by subpoena to appear and testify at an administrative hearing or to appear for
4 genetic paternity tests fails to do so;

5 (c) a person compelled by subpoena duces tecum to produce evidence at an administrative hearing
6 fails to do so;

7 (d) an obligor or obligee subject to a discovery order issued by the hearings officer fails to comply with
8 discovery requests;

9 (e) a person or entity compelled by administrative subpoena from the department or another IV-D
10 agency to produce financial information or other information needed to establish paternity or to establish, modify,
11 or enforce a support order fails to do so;

12 (f) a payor under an order to withhold issued pursuant to 40-5-415 fails to comply with the provisions
13 of the order. In the case of a payor under an income-withholding order, a separate contempt occurs each time
14 that income is required to be withheld and paid to the department and the payor fails to take the required action.

15 (g) a payor or labor union fails to provide information to the department or another IV-D agency when
16 requested under 40-5-443[; or]

17 [(h) a financial institution uses information provided by the department pursuant to 40-5-924 for any
18 other purpose without the authorization of the department]; or

19 (i) an employer fails to comply with the provisions of 40-5-922. A separate contempt occurs each time
20 that an employer fails to report an employee under 40-5-922.

21 (15) Before initiating a contempt proceeding, the department shall give the alleged contemnor notice
22 by personal service or certified mail of the alleged infraction and a reasonable opportunity to comply with the
23 law and to cure the alleged infraction. In order to initiate a contempt proceeding, an affidavit of the facts
24 constituting a contempt must be submitted to the hearings officer, who shall review it to determine whether there
25 is cause to believe that a contempt has been committed. If cause is found, the hearings officer shall issue a
26 citation requiring the alleged contemnor to appear and show cause why the alleged contemnor should not be
27 determined to be in contempt and required to pay a penalty of not more than \$500 for each count of contempt.
28 The citation, along with a copy of the affidavit, must be served upon the alleged contemnor either by personal
29 service or by certified mail. All other interested persons may be served a copy of the citation by first-class mail.

30 (16) At the time and date set for hearing, the hearings officer shall proceed to hear witnesses and take

1 evidence regarding the alleged contempt and any defenses to the contempt. If the alleged contemnor fails to
2 appear for the hearing, the hearing may proceed in the alleged contemnor's absence. If the hearings officer finds
3 the alleged contemnor in contempt, the hearings officer may impose a penalty of not more than \$500 for each
4 count found. The hearings officer's decision constitutes a final agency decision, subject to judicial review under
5 40-5-253 and subject to the provisions of Title 2, chapter 4.

6 (17) An amount imposed as a penalty may be collected by any remedy available to the department for
7 the enforcement of child support obligations, including warrant for distraint pursuant to 40-5-247, income
8 withholding pursuant to Title 40, chapter 5, part 4, and state debt offset, pursuant to Title 17, chapter 4, part 1.
9 The department may retain any penalties collected under this section to offset the costs of administrative
10 hearings conducted under this chapter.

11 (18) The penalties charged and collected under this section must be paid into the state treasury to the
12 credit of the child support enforcement division special revenue fund and must be accompanied by a detailed
13 statement of the amounts collected. (Bracketed language terminates on occurrence of contingency--sec. 1, Ch.
14 27, L. 1999.)"

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16 **Section 2.** Section 40-5-922, MCA, is amended to read:

17 **"40-5-922. (Temporary) Directory of new hires -- employer reporting requirements.** (1) (a) An
18 employer doing business in the state shall report to the department the hiring or rehiring of an employee to whom
19 the employer anticipates paying income.

20 (b) An employer shall report the hiring or rehiring of an employee by submitting a copy of the employee's
21 completed W-4 form or, at the option of the employer, its informational equivalent or any other format agreed
22 to by the department. The report must include the employee's name, date of hire, social security number, and
23 residential and mailing addresses; and the name, address, and federal identification number of the employer.
24 The report may include the employee's date of birth.

25 (c) If an employer provides health or medical insurance coverage for an employee and the coverage
26 may be extended to the employee's children, the employer may, along with the date the employee becomes
27 eligible for coverage, provide that information as part of the new hire report under subsection (1)(b).

28 (2) Transmission of the reports must be by first-class mail, electronic or magnetic transmission,
29 including facsimile transmission, or any other format agreed to by the department. Written reports must be
30 submitted within 20 days of the employee's date of hire or rehire. Reports transmitted electronically or

1 magnetically may be made by two transmissions monthly, if necessary, not less than 12 or more than 16 days
2 apart.

3 (3) An employer who has employees in two or more states and who transmits new hire reports
4 electronically or magnetically may comply with this section by designating one of the states in which there is an
5 employee and transmitting the report of new hires to that state. A multistate employer who elects to report to only
6 one state shall give written notice of the state to which the employer will transmit new reports. As required by
7 42 U.S.C. 653a(b)(1)(B), this notice must be transmitted to the secretary of the federal department of health and
8 human services.

9 (4) (a) An employer failing to report is subject to a civil penalty of up to \$24 for each day that the
10 employer fails to provide the report.

11 (b) If the failure to report is the result of a conspiracy between the employer and the employee to not
12 supply the report or to supply a false or incomplete report, the employer is subject to an additional penalty of
13 \$495 for each violation.

14 (c) An amount imposed as a penalty may be collected by any remedy available to the department for
15 the enforcement of child support obligations.

16 ~~(4)~~(5) An employer providing reports is not liable to the employee for the disclosure or any subsequent
17 use by the processing center of the information. (Terminates on occurrence of contingency--sec. 1, Ch. 27, L.
18 1999.)"

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